IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9534 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESHBHAI MAGANLAL TRIVEDI

Versus

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Appearance:

1. Special Civil Application No. 9534 of 1998

MS SADHANA SAGAR for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 24/02/2004

ORAL JUDGEMENT

1. The petitioner was appointed as Part-time Peon vide order dated 8th January, 1990 at a fixed salary of

Rs.150/- p.m. He was required to work for two hours daily. However, it appears that at such meagre salary, for two hours the respondents were finding it difficult to have any part-timer. It was, therefore, decided to increase the working hours from 2 to 4 and to increase the wage from Rs.150/- to Rs.300/- p.m. The petitioner was thereafter required to work for 4 hours per day. It is his grievance that inspite of the circular dated 26th December, 1980 to regularize the services of part-timer working on a permanent post for 3 years or more, his case is not being considered for regularization. He wrote letter dated 30th December, 1992 and thereafter on 5th January, 1995 making a representation to the respondents to consider his case for regularization. However, no favourable reply was received. It is in these circumstances he has approached this Court by filing this petition. The petitioner is still in service and he is being now paid salary of Rs.900/- p.m.

3. Having heard Miss Sadhna Sagar, learned advocate appearing for the petitioner and Mr. P.D. Bhate, Ld. AGP for the respondents and having gone through the record of the petition, it is clear that the petitioner had been appointed on temporary basis as Peon with respondent on 8th January, 1990. There is no challenge to his appointment on the ground that it was done without following due procedure. I, therefore, take it that the said appointment even on the temporary basis was in accordance with the norms laid down for the said purpose and after due compliance with the procedure.

3.1. The question that now remains to be decided is that despite the circular dated 26th December, 1980 why the petitioner's appointment on the post of Peon was not made on permanent basis. There is no dispute that the post is a permanent post. The very fact that the petitioner has been working daily for 4 hours and more shows that there was a need of full-time Peon in the said department. Further that the circular of 26th December, 1980 itself prescribes that part-timer working in the permanent post for more than 3 years has to be regularized on that post, if the vacancy is available. It may also be noted here that similar controversy had arisen in Special Civil Application No. 8917 of 1998 and its cognate matters wherein both the aforesaid circulars i.e. circular dated 26th December, 1980 and dated 21st August, 1995 have been considered and thereafter the petitions have been allowed and appropriate directions for considering the cases of those petitioners for regularizing the services have been given. Since the identical question has been involved in this petition,

the same is required to be allowed.

4. The respondents are, therefore, now required to be directed that irrespective of the Circular of 21st August, 1995, they shall consider the case of petitioner for appointment on permanent post in Class-IV and if the permanent post is found vacant, he shall be appointed on the same in accordance with his claim, in the matter of seniority and the Regulations and if otherwise, he is not ineligible. Appointment should not be denied on the ground of overage or on the ground that it may amount to giving a back-door entry. This exercise to be carried out as early as possible but in any case not later than 30th May, 2004. If need be, the petitioner can make appropriate representation, which will be considered in light of this judgment and in particular, the directions given therein.

The result is that this petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.